

**INTERLOCAL AGREEMENT BETWEEN
WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
AND [COUNTY/CITY] FOR
MITIGATION OF LAND DEVELOPMENT IMPACTS**

1. PARTIES

This Interlocal Agreement ("Agreement") is made and entered into this _____ day of _____, 200____ by and between the Washington State Department of Transportation ("STATE") and [____COUNTY/CITY____] [("COUNTY" _ "CITY")].

2. PURPOSE AND AUTHORITY

- 2.1 The purpose of this Agreement is to provide a means to fund and construct improvements to State transportation facilities made necessary by traffic impacts caused by the construction of new developments. It is the intent of this Agreement to furnish a framework within which the parties will work together and with developers to provide an equitable balance in the bearing of costs for these improvements and to provide a predictable method of assessing traffic mitigation payments.
- 2.2 The parties have the authority to enter into this Agreement pursuant to Chapter 39.34 RCW, Interlocal Cooperation Act, wherein the legislature has authorized governmental units to make the most efficient use of their individual powers by enabling them to cooperate on a basis of mutual advantage for public benefit.
- 2.3 The STATE has the authority and obligation to perform all duties necessary for the planning, locating, designing, constructing, improving, repairing, operating and maintaining of State highways, bridges and other structures pursuant to Title 47 RCW and rules promulgated thereunder, Title 468 WAC.
- 2.4 The [_____] has the authority and obligation to plan for and manage growth within its jurisdiction, to review new development plans and grant building permits, and to provide for the mitigation of development impacts pursuant to Chapter 36.70A RCW (Growth Management Act), Chapter 36.70B RCW (Local Project Review), Chapter 36.75 RCW (Roads and Bridges), and Chapter 58.17 RCW (Subdivisions). [as provided by law and/or] [Ordinance Nos. _____]
- 2.5 Pursuant to Chapter 43.21C RCW (State Environmental Policy Act - SEPA), the parties are obligated to identify the significant adverse environmental effects, if any, of new development on State transportation facilities and to provide for the mitigation of such adverse effects as long as such mitigation measures are reasonable and capable of being accomplished.

NOW, THEREFORE, in accordance with the above-noted statutes and in consideration of the terms and conditions contained herein,

IT IS MUTUALLY AGREED AS FOLLOWS:

3. SCOPE OF AGREEMENT AND DEVELOPMENTS COVERED¹

This Agreement applies to all developments: (1) having frontage on OR requiring direct access onto a State highway AND/OR (2) all developments which will be subject to SEPA review. Single-family residences, duplexes, short plats and certain small commercial developments are excluded, consistent with SEPA regulations unless they are located adjacent to a State highway.

4. DEFINITIONS

- 4.1 Average Daily Trip (ADT): The volume of traffic passing a point or segment of a highway, in both directions, during a period of time, divided by the number of days in the period and factored to represent an estimate of traffic volume for an average day of the year.
- 4.2 Development Approval: Any written authorization from a county, city or town that authorizes the commencement of development activity.
- 4.3 High Accident Location (HAL): An intersection, on-ramp or other point on a State highway with documented high accident rates.
- 4.4 Level of Service (LOS): A measure of traffic congestion along a roadway or at an intersection identified by a declining letter scale from "A" to "F."
- 4.5 Mitigation: Changes or contributions to changes made to the State transportation system, either by facility construction, payment, or dedication/donation of right of way, to offset or lessen a development's impacts on the traffic system.
- 4.6 Peak Hour: The hour during the morning or afternoon that experiences the most critical level of service for a particular roadway or intersection.
- 4.7 Programmed Project: A State highway project to improve highway capacity. See **Exhibit C**, attached.
- 4.8 Substantial Completion Date: The day the State representative determines the STATE has full and unrestricted use and benefit of the facilities, from both the operational and safety standpoints, and only minor incidental work, replacement of temporary substitute facilities, or correction or repair remain for the physical completion of the total contract.

¹ Sections 5.2, 6.1., 7.2, 7.4., and 11 require the parties to negotiate and then insert the correct Agreement Terms.

- 4.9 Traffic Demand Management (TDM): Employer traffic reduction incentive plans, e.g., carpool, transit.
- 4.10 Traffic Mitigation Payment: The proportionate share portion of the cost of public facility improvements that is reasonably related to the service demands and needs of new development.

5. [] RESPONSIBILITIES

The [] agrees that for every development application to which this Agreement applies in accordance with **Section 3**, above, the [] will take the actions following:

- 5.1 The [] shall provide the developer with copies of the Traffic Impact Analysis Checklist, **Exhibit B**, attached, in accordance with **Section 7.2** and the Channelization Plan Checklist, **Exhibit D**, attached, at or before the pre-submittal conference between the [] and a developer. The [] shall require the developer to submit the appropriate Traffic Impact Analysis Checklist and/or Channelization Plan Checklist with its development application. [] shall require the developer to submit additional information if requested by the STATE.
- 5.2 The [] shall give the STATE written notice of the proposed development and provide the STATE with a minimum of [TIMES NEGOTIABLE: 14-21 days for a SEPA DNS and 21-30 days for a SEPA EIS] to review, comment, consult, and participate in the []'s development review and approval process in relation to any development impacts to the State's transportation system.
- 5.3 The [] shall inform the developer that the STATE may require the developer to pay the actual cost of reviewing and inspecting the development plans and that the STATE may bill the developer directly for those review costs. Developers may contact the STATE to estimate the approximate cost of any development review.
- 5.4 The [] shall recommend imposing the STATE's requested mitigation measures as a condition of the []'s development approval to the extent that such mitigation measures are reasonably related and proportional to the development's impact on State transportation facilities. Should the [] wish to modify or not recommend the STATE's requested mitigation measures, the [] will work with the STATE to resolve any differences before approving any development proposal.
- 5.5 a All traffic mitigation payments collected from a developer to mitigate traffic impacts on State transportation facilities shall be held by the [] in a

separate account. Payments shall be paid prior to the granting of any building permit unless the development is a subdivision or short subdivision, in which case payment is required prior to the recording of the subdivision plat or short subdivision plat; Provided, that where no building permit will be associated with a special use permit, then payment is required as a precondition to approval. In the alternative, traffic mitigation payments may be due as specified by the [_____]. The [_____] shall provide to the STATE on a quarterly basis a statement of all developer payments held by the [_____] for all STATE Programmed Projects.

- 5.5 b The STATE shall request and the [_____] shall transfer mitigation payments to the STATE through a Developer Mitigation Payment for Transfer to State by Local Agency Agreement. See Exhibit A, attached.
- 5.5 c Mitigation payments, or portions thereof, held by the STATE, but not expended within five (5) years for STATE programmed projects, shall be returned to the [_____] and the [_____] shall return the funds to the developer pursuant to the provisions of **Section 6.6** of this Agreement and the Developer Mitigation Payment for transfer to the STATE by Local Agency agreement. See Exhibit A.
- 5.5 d Mitigation Payments, or portions thereof, held by the [_____], but not expended within five (5) years for STATE Programmed Projects, Shall be returned to the developer by the [_____].
- 5.6 The parties understand that any person aggrieved by a decision imposing mitigation measures in accordance with this Agreement may appeal such decision as provided by law and/or [_____] Ordinance Nos.[_____].
- 5.7 [_____] shall comply with the provisions of **Section 6.5**, with respect to access connections to State facilities and any construction within limited access facilities.
- 5.8 [_____] shall comply with the provisions of **Section 7.7**, with respect to the determination and application of credits against developer proportionate share mitigation obligations.
- 5.9 [_____] shall comply with the provisions of **Section 7.8**, with respect to any STATE and developer agreement for the mitigation of impacts to State facilities.
- 5.10 [_____] shall be responsible for establishing setback requirements with respect to the right of way line if the developer has dedicated/donated property as a mitigation measure.
- 5.11 [_____] shall file this Agreement with the [Name of County] County Auditor pursuant to RCW 39.34.040.

6. STATE RESPONSIBILITIES

6.1 The STATE shall review the documents and proposed development as provided by the [] pursuant to **Section 5.2**, and shall provide to the [] written recommendations, if any, specifying the mitigation measures necessary to mitigate the proposed development's impacts on the State's transportation system. STATE requested mitigation measures shall be in accordance with **Section 7** and reasonably related and proportional to the proposed development's impacts to the State's transportation system. The STATE will respond within [TIMES NEGOTIABLE: 14-21 days for a SEPA DNS and 21-30 days for a SEPA EIS] from the date of the notice of the development application. The STATE will provide explanations and technical assistance to developers with respect to any STATE requested mitigation measures.

6.2 STATE requested impact mitigation measures will be in accordance with **Section 7** and shall include:

- a. Negotiated construction improvements;
- b. Negotiated payment in lieu of construction of improvements;
- c. Traffic mitigation payment;
- d. Dedication or Donation of property;
- e. Installation of traffic signal(s);
- f. Channelization revision(s); and/or
- g. Frontage improvements.

STATE shall determine applicable developer mitigation credits in accordance with **Section 7.7**, for construction of improvements and/or for dedication/donation of property.

6.3 Should the STATE not comply with the provisions of **Section 6.1**, the [] may assume that the STATE has no comments or information relating to potential impacts of the development on State transportation facilities and may not require developer mitigation therefor. In addition, should the STATE not comply with the provisions of **Section 6.1**, the STATE shall not file a SEPA appeal for that development application. The provisions of this section do not apply should the [] fail to comply with the provisions of **Section 5.2**. Nothing herein precludes the [] from determining specific adverse development impacts on State transportation facilities and requiring mitigation consistent with this Agreement; Provided, that the [] first obtains the STATE's written approval prior to imposing such mitigation as a condition of

development approval; and Provided further, that the [] imposes no duplicative mitigation measures as a condition of development approval.

- 6.4 STATE shall be responsible for supporting the STATE's requested mitigation measures at [] hearings or other proceedings. Such support may include the provision of written analyses, declarations, testimony, or other documentation.
- 6.5 STATE shall maintain all traffic mitigation payments received from the [] pursuant to **Section 5.5** in an accounting format which will permit tracing of any expenditure of the mitigation payment to ensure that the expenditure is made in accordance with the provisions of this Agreement and within five (5) years of the []'s receipt of the payments. If any moneys received have not been expended as provided herein, the STATE shall return the moneys to the [] and the [] shall return the moneys to the developer. Nothing herein shall preclude a developer from waiving, at any time, its potential right to a refund. Records of traffic mitigation payments shall be maintained in accordance with generally accepted accounting practices and shall be made available for inspection during normal business hours to the [], developer, or any authorized agent or representative thereof, upon giving the STATE reasonable notice of such request.
- 6.6 Access Connections: All requests for access connections onto a State highway shall be provided for as follows:

NOTE: CHOOSE BETWEEN THE BELOW "6.6.a" PARAGRAPHS, DEPENDING UPON WHETHER WSDOT IS CONTRACTING WITH A CITY OR COUNTY:

- a. On Access Managed State Highways Within City Limits: CITY shall review and process all requests for access connections onto access managed State highways that are considered to be city streets pursuant to chapter 47.24 RCW. The CITY also shall provide that each access connection meets or exceeds the State's Highway Access Management regulations as provided pursuant to chapter 47.50 RCW and WAC 468-51; 468-52. Should State and City access requirements conflict, CITY and STATE shall negotiate a resolution. Appeals of access decisions shall be pursuant to CITY ordinance.

OR

- a. On Access Managed State Highways Within County Limits: STATE shall review and process all requests for access connections onto managed access State highways that are located within the COUNTY. Appeals of access decisions shall be pursuant to STATE regulation.
- b. On Limited Access State Highways: STATE shall review and process all requests made to the [] for access connections onto limited

access State highways. The STATE shall use chapter 47.52 RCW, WAC 468-58, and its *Design Manual* criteria for said access review, and if the access is approved, the developer shall be required to pay compensation to purchase the STATE's access rights.

- 6.7. The STATE shall have the sole responsibility and control to permit and/or oversee any improvements to be constructed within the right-of-way of a limited access State highway.

7. STATE MITIGATION POLICIES AND PROCEDURES

- 7.1 STATE will not request, nor will the [] recommend, any mitigation measures that fall outside the scope of **Section 7**. In order to determine and mitigate impacts generated by a proposed development to the State transportation system, the STATE shall identify any development impacts to the State facilities and shall determine the appropriate mitigation measures based upon the policies and procedures outlined herein. The STATE shall request the mitigation measures that are reasonably related and proportional to a development's impact on State transportation facilities.
- 7.2 Traffic Analysis: The [] shall require a developer to submit a Traffic Impact Analysis Checklist (**Exhibit B**, attached) and a Channelization Plan Checklist (**Exhibit D**, attached) as part of the developer's development application. See Section 5.1. At a minimum, the traffic analysis shall consist of Section 1 of the checklist, fully completed and signed by the developer. The STATE may only require a traffic study consistent with Section 2 of the checklist if one of the following two conditions is met: (1) the development generates more than [NEGOTIABLE: e.g., 50 PM] peak-hour trips; or, (2) the development will add [NEGOTIABLE: e.g., ten (10)] or more PM peak-hour trips to an LOS "F" intersection or HAL location. Only the STATE may waive the requirement for traffic analysis studies.
- a. STATE will use [] approved trip reduction credits for TDM measures in determining traffic impacts on State transportation facilities.
- b. STATE may request supplemental information and analysis as necessary to determine development impacts, if any, on State transportation facilities. Supplemental information may include explanatory information, detailed documentation or further analysis to clarify or expand on data provided in the traffic analysis.
- 7.3. Traffic Mitigation Payments: STATE may request that a condition of Development Approval be the developer's payment of its traffic mitigation payments to a programmed project, as listed in **Exhibit C**, attached, to mitigate development impacts, pursuant to the following:

- a. The STATE has determined a rate schedule (**Exhibit C**, attached), based on ADT for State transportation facilities which have been programmed for capacity improvements (i.e., widening, new signalization, interchange, or channelization). The ADT schedule may be periodically updated by the STATE, and the STATE shall provide a revised copy of **Exhibit C** to the [_____]. Based on a traffic analysis, a development's proportionate share obligation may be calculated by multiplying the rate by the number of development-generated ADTs that impact each State programmed capacity improvement. A traffic mitigation payment or property dedication/donation may be made in lieu of constructing mitigation improvements solely at the STATE's option.
- b. The STATE shall request traffic mitigation payments up to the Substantial Completion Date of the projects identified in **Exhibit C**.
- c. The STATE shall not use any mitigation received under this Agreement for any State projects other than those identified in **Exhibit C**.

7.4 Level of Service (LOS) and Safety (HAL): Any development which will (1) [NEGOTIABLE: add ten (10) or more PM] peak-hour trips (a) to an identified safety problem location listed in the State's High Accident Location (HAL) log or (b) to an existing LOS "F" condition at a State highway intersection; or (2) generate [NEGOTIABLE: fifty or more PM peak-hour trips] which will cause an LOS "F" condition at a State highway intersection, will be subject to the conditions following:

- a. The STATE will request that conditions of development approval require that a development maintain an existing LOS "F" condition intersection at its pre-development condition, maintaining it in no worse a condition with respect to estimated intersection delays. However, if improvements are required to mitigate an existing LOS "F" condition, the intersection improvements shall be constructed pursuant to State specifications and accepted by the STATE within time frames as provided by [_____] regulation.
- b. The STATE will request that a development not be approved if the development causes an LOS "F" condition at a State highway intersection unless the developer funds or constructs intersection improvements needed to maintain an LOS "E," or better, condition.
- c. If the [_____] determines, after consultation with the STATE, that for reasons beyond the control of the developer, construction of the traffic improvements required under this Agreement cannot be completed prior to approval for occupancy or final inspection, the [_____] may allow the developer to provide a performance bond, assignment of savings account/certificate of deposit, or escrow account in favor of the STATE for the required traffic improvements. See **Exhibits F and G**, attached.

- d. Installation of Traffic Signal: The STATE may request that a condition of Development Approval be the installation of a traffic signal to mitigate LOS or HAL impacts as identified by a traffic analysis. Additionally, a developer or [] may request signalization which shall only be approved by the STATE if the spacing guidelines under WAC 468-52 and at least one Manual on Uniform Traffic Control Devices (MUTCD) signal warrant is met.
 - e. Channelization Revision: The STATE may request that a condition of Development Approval be the construction of channelization improvements to mitigate LOS or HAL impacts, or in conjunction with the approval of an access connection, or if warranted, pursuant to the *Washington State Department of Transportation Design Manual*. Improvements shall be constructed pursuant to State specifications and approved by the STATE. Additionally, a developer may request channelization as part of its development application, such requests shall be submitted through the [] to the STATE for STATE's approval. All such requests shall be accompanied by a channelization plan and Channelization Plan Checklist **Exhibit D**, attached, and the STATE shall have sole authority to approve such plans.
 - f. The STATE may designate State highway intersections as being at ultimate capacity where the STATE determines that additional expenditure of funds is not warranted to maintain the LOS, or where, for example, the only LOS solution is dependent upon traffic signal spacing requirements. The STATE will not request traffic mitigation improvements to maintain an LOS for an intersection at its ultimate capacity; however, the STATE may request mitigation to address intersection operational and safety issues.
 - g. The STATE may request safety improvements, constructed pursuant to State specifications and accepted by the STATE, within time frames as provided by [] regulation, to mitigate development impacts on HAL locations.
 - h. The STATE will not object to a development that impacts a designated LOS "F" intersection or HAL location when there is absolutely no mitigation improvement that can be made.
- 7.5 Frontage Improvements: The STATE may request, as a condition of Development Approval, that frontage improvements (e.g., curb, gutter, sidewalk, paved shoulder and associated roadway widening) be constructed along the development's frontage on the State facility as mitigation measures, consistent with the following:

- a. Frontage improvements shall be based upon identified impacts to the State transportation system, shall conform to State construction specifications, shall be approved by the STATE, and shall be timely completed in accordance with [] regulation.
- b. The STATE may require that frontage improvement mitigation be constructed as full standard, interim, or minimum, based upon engineering reasons, which are outlined under **Section c** below. When an engineering reason precludes the construction of full standard frontage improvements, interim or minimum frontage improvements may be required. Interim frontage improvements shall be determined by the STATE and the []. Minimum frontage improvements shall consist of paved driveway aprons at each access point along the development's frontage, and where necessary, a shoulder shall be constructed for ten feet along the departure side of the driveway to provide a refuge area for pedestrians and/or a pullout area for service vehicles. The shoulder shall be up to eight feet wide, as determined by the STATE and the [], and shall include a 3:1 paved transition taper which, where necessary, will be constructed beyond the development's frontage as right of way allows.
- c. Engineering Reasons: Engineering reasons, which may preclude the construction of full standard frontage improvements, may include the following:
 1. Horizontal realignment of the highway precludes the building of full frontage improvements in their ultimate horizontal location.
 2. Vertical realignment of the highway precludes the building of full frontage improvements in their ultimate vertical location.
 3. The property abuts an arterial road that will ultimately include four or more lanes and construction of full frontage improvements at their ultimate location would create an undesirable discontinuity along the highway.
 4. The highway is programmed for construction and it would be more efficient for the STATE to construct the full frontage improvements as part of an overall project.
 5. The STATE and [] determine that there are other significant reasons not to require full standard frontage improvements at the time of the development.

- 7.6 Right of Way Dedication/Donation: The STATE may request as a condition of Development Approval that a developer dedicate/donate property as a mitigation measure when (1) a property is located adjacent to a State highway that is programmed for capacity or safety improvements; (2) additional right of way is

needed for improvements in accordance with **Sections 7.4 and 7.5**; or (3) it is necessary to conform the development site to the ultimate width or design of the State facility. The dedicated/donated property may be transferred either to the STATE or to the [] as determined by the STATE. The [] shall determine the timing of the property dedication/donation.

- a. The STATE may not require a property dedication/donation for future highway projects when such is not reasonably required by the development impacts; however, the STATE will provide the developer with information about the STATE's plans and designs for future highway construction.
- b. Nothing in this Agreement precludes the STATE and a developer from executing a separate agreement for a property dedication or donation needed by the STATE for future highway expansion.

7.7 Credits Against Traffic Mitigation Payment: Developers shall receive credit against their traffic mitigation payment obligations as determined pursuant to **Section 7.3** where the value of their mitigation improvements and/or property dedications/donations required in accordance with **Sections, 7.4, 7.5, and 7.6** are part of the cost of capacity projects included in **Exhibit C**, attached. The STATE shall determine credits for mitigation construction and property dedication/donation and apply them as follows:

- a. The value of property dedications/donations shall be based upon comparable sales consistent with the values used by the STATE to estimate the right of way costs for the projects included in **Exhibit C**. As an alternative, the value of property dedications/donations may be based upon an approved appraisal that is no more than two years old and which has been performed by a qualified appraiser licensed in the State of Washington.
- b. The value of any mitigation construction shall be the actual costs expended by the developer and supported by invoices or other acceptable documentation.
- c. Application of Credits: The value of the mitigation credits as determined above shall be applied as follows:
 - 1) First: to the property dedication/donation; and
Second: to the mitigation construction, such as for frontage improvements, channelization, and/or signalization. Developer shall pay any remaining balance.
 - 2) Nothing in this Agreement shall preclude the [] from entering into a contract with a developer for the reimbursement of

a portion of the uncredited costs (latecomer agreement) pursuant to chap. 35.72 RCW.

- 7.8 Mitigation Agreements: Nothing in this Agreement shall preclude the STATE and a developer from entering into a mitigation agreement to provide for the mitigation of development impacts to State facilities consistent with **Exhibit E**, attached. [] shall not assess duplicative impact fees for the same system improvements in violation of RCW 43.21C.065.
- 7.9 References: Policies, standards and criteria for access, mitigation measures and construction applicable to this Agreement include, but are not limited to, the documents listed below. The edition used for review of an application shall continue to apply for the duration of any approval or permit only to the extent that it is an element of the approval or permit.
- a. MS22-01, Washington State Department of Transportation (WSDOT) Design Manual.
 - b. MS22-87, WSDOT Utilities Manual.
 - c. MS23-03, WSDOT Hydraulics Manual.
 - d. M21-01, WSDOT Standard Plan.
 - e. M41-01, WSDOT Construction Manual.
 - f. M51-02, WSDOT Traffic Manual.
 - g. M26-01, WSDOT Right-Of-Way Manual.
 - h. Highway Capacity Manual (Special Report 209), Transportation Research Board.
 - i. MUTCD, Federal Highway Administration Manual On Uniform Traffic Control Devices.
 - j. WAC 468-51 & WAC 468-52, Washington Administrative Codes—Highway Access Management.
 - k. Trip Generation Manual, Institution of Transportation Engineers.

8. RELATIONSHIP TO EXISTING LAWS AND STATUTES

This Agreement in no way modifies or supersedes existing laws and statutes. In meeting the commitments encompassed in this Agreement, all parties will comply with the requirements of the State Environmental Policy Act, Growth Management Act, Open Meetings Act, Annexation Statutes and other applicable State or local laws.

9. RELATIONSHIP TO FUTURE PLANNING AND RECIPROCAL IMPACT MITIGATION AGREEMENTS

The STATE and the [] understand and agree that many multi-jurisdictional planning and growth management issues will need to be addressed as growth continues. Both parties also agree and understand that joint planning agreements will be required to accomplish the planning and plan implementation requirements of the Growth

Management Act of 1990 as amended. Such agreements may focus on particular issues and delineate specific responsibilities that are beyond the scope of this Agreement.

10. DEVELOPMENT AND REVIEW OF STANDARDS AND POLICIES

The [] and the STATE agree to work toward the establishment of coordinated transportation system development standards and development mitigation policies and requirements as required by State law. The [] and the STATE will periodically review their existing mitigation policies for consistency and coordination in the implementation of this Agreement and will promptly notify the other in the event of any material change in such policies. In that event, the parties agree to amend this Agreement as appropriate.

11. EFFECTIVE DATE, DURATION, AMENDMENT AND TERMINATION

- 11.1 This Agreement shall become effective five (5) days after both the STATE and the [] approve and sign this Agreement and after the Agreement is filed with the County Auditor, pursuant to Section 5.11.
- 11.2 This Agreement shall apply to all developments, as defined in Section 3, that the [] determines to comprise a complete application on or after the effective date of this Agreement through the termination date of this Agreement.
- 11.3 This Agreement may be modified only by written amendment executed by both parties.
- 11.4 This Agreement shall remain in effect until terminated by either party, in whole or in part, upon thirty (30) days advance written notice directed to [Name and Address].
- 11.5 In the event that this Agreement is terminated by either party, the sections of this Agreement that govern the expenditure or reimbursement of developer mitigation payments that have been paid, but not expended, shall survive its termination. The parties agree to expend or reimburse developer mitigation payments under the same terms and conditions in effect under this Agreement as when such payments were collected. The parties further agree that property acquired by dedication/donation during the term of this Agreement shall inure to that party in whose name it was acquired.

12. LEGAL RELATIONS

- 12.1 The provisions of this Agreement shall be administered by the Washington State Department of Transportation for the STATE and the Departments of Public Works and Planning and Community Development for the []. All real and personal property and funds shall be acquired, held, administered, and disposed of by the STATE or the [] in its own name in accordance with applicable laws.

- 12.2 Each party shall be responsible for its own administrative determinations and actions taken in the performance of this Agreement.
- 12.3 The STATE agrees to make State staff available for support in any challenges to State-requested mitigation measures. The STATE agrees to cooperate with the [] in the defense of challenges to any land development condition, mitigation measure, payment or other decision made at the STATE's request or based on STATE's review or recommendation.
- 12.4 Each party shall protect and hold harmless the other party, its officers, officials, employees, and/or agents from and against all claims, suits or actions arising from an intentional or negligent act or omission of that party, its officers, officials, employees, and/or agents while performing under the terms of this Agreement. In the event of a claim for damages of any nature whatsoever arising out of the performance of this Agreement caused by the concurrent actions of the parties, their officers, officials, employees, and/or agents, each party shall provide its own defense and be liable for damages, costs, fees or other amounts only to the extent of its individual actions that are the basis for the imposition of liability or damages. The provisions of the section shall survive the termination of this Agreement.

13. NO THIRD PARTY BENEFITS

This Agreement is made for the sole benefit of the STATE and the [] and not for any third party's benefit.

14. SEVERABILITY

If any provision of this Agreement or its application to any person or circumstance is held invalid, the remainder of the provisions and/or the application of the provisions to other persons or circumstances shall not be affected.

IN WITNESS WHEREOF, the parties have signed this Agreement, effective on the date established in **Section 11** of this Agreement.

Washington State Department of
Transportation (WSDOT)

[COUNTY/CITY]

Name:

Name:

Title:

Title:

Dated this ____ day of _____ 200__

Dated this ____ day of _____ 200__

Approved as to form:

Approved as to form:

Name:

Name:

Assistant Attorney General
Attorney for the WSDOT

Attorney for [_____]

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